

REMARKS

Claims 1, 5, 12 and 14 have been amended to clarify what is meant by the expression "effective size" and how it is related to the "plurality of apertures". Support for this amendment can be found at page 10, lines 14-20.

No claims have been canceled and no new claims have been added. No new matter has been added. Claims 1 to 17 remains pending. Entry of this Amendment is respectfully requested.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version with markings to show changes made".

REJECTIONS

Rejections Under 35 U.S.C. §112

112 Second Paragraph

Claims 1-11 and 14 are rejected under 35 U.S.C § 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which the Applicant regards as the invention. More specifically, the phrases rejected are "an effective size of at least 0.2 square millimeters", in Claims 1 and 14, and "a size of at least 1.0 square millimeters", in Claim 5. Applicant respectively traverses the rejection.

Applicant is amending the claims in question to better clarify these phrases. The amendment clarifies the fact that the phrases in question are directed to the effective size of each individual aperture of the plurality of apertures. The specification at page 10, lines 14-20 clearly teaches that the terms rejected in the Office Action are directed to each individual aperture. In view of this Applicant are amending these claims to better clarify this.

Furthermore, while the rejection in question is directed to Claims 1-11 and 14, the Office Action identifies terms in only claims 1, 5 and 14 as being specifically rejected. Does this mean there are other 112, second paragraph rejections pending on Claims 2-4, and 6-11, or where they rejected because they depend upon a rejected claim? Clarification on this issue would be appreciated.

In view of the foregoing remarks and the clarifying amendments, it is respectfully requested that rejection of Claims 1-11 and 14 be reconsidered and withdrawn.

Rejections Under 35 U.S.C. §103

Daniels in view of Ouellette

Claims 1-17 are rejected under 35 U.S.C. §103 as being obvious over Daniels et al., US Patent No 6,319,239 in view of Ouellette et al., US Patent No 4,637,819. It is contended in the Office Action that the claimed non-woven webs, absorbent articles and methods are obvious in light of what is taught by Daniels in view of Ouellette. Applicant respectfully traverse the rejection.

It is well known that to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. MPEP706.02(j); In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); and MPEP Section 2143 - Section 2143.03.

The combination of Daniels and Ouellette fails to teach, or suggest all of Applicant's claim limitations. More specifically, there is no teaching, or suggestion in either of Daniels or Ouellette of an "effective size" let alone the specific "effective sizes" required in Applicant's claims. The Office Action has failed to make a prima facie case of obviousness, as there is no suggestion, teaching or disclosure of an "effective size". There is simply nothing in either of these references either combined or alone which would lead one of ordinary skill to Applicant's claimed invention. These references are wholly silent as to "effective size", and consequently fail to establish a prima facie case of obviousness.

Instead the Office Action is attempting to use the "obvious to try" standard which has been consistently held improper. It is well settled that the question of obviousness under 35 U.S.C. §103 is not what the artisan could have done, but rather what would have been obvious for such a person to do. See Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986), and In re Brouwer, 37 U.S.P.Q.2d 1663 (Fed. Cir. 1996). See also MPEP 2143.01; In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since there is no teaching of "effective size", in either of Daniels and Ouellette.

In light of the foregoing remarks, it is respectfully requested that rejection of Claims 1-17 be reconsidered and withdrawn.

Conclusion.

In light of the amendments and remarks presented herein, Applicant respectfully submits that Claims 1-17 are allowable over the prior art of record or any combination thereof. In the event that issue remain prior to allowance of the noted claims, then the Examiner is invited to call Applicant's undersigned agent to discuss any remaining issues.

Respectfully submitted,

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(CM1905Q response to OA.doc amendment)

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims

Please amend Claims 1, 5, 12 and 14 as indicated:

1. (Amended) A nonwoven web, [characterized by] wherein said web comprises:

[said web having] a first zone and at least one second zone, said first zone and said second zone having a bonded area, the bonded area of said second zone being greater than the bonded area of said first zone, said first zone having an effective open area of at least about 10 percent and a plurality of apertures, wherein each of said apertures having [with] an effective size of at least 0.2 square millimeters.

5. (Twice Amended) The web according to Claim 2 wherein said central zone has a plurality of apertures, wherein each of said apertures having [with] an effective size of at least 1.0 square millimeter.

12. (Amended) A method of forming a bonded nonwoven web, said method comprising the steps of

- a) bonding the web in a first or central zone with a bonded area;
- b) bonding the web in at least one second or outer zone with a bonded area greater than the bonded area of the central zone;
- c) aperturing the central zone such that the central zone has a plurality of apertures, wherein each of said apertures having an effective size of at least 0.2 square millimeters.

- 14.(Amended)The method of Claim 12 wherein each of said apertures have an effective size of at least 1.0[.2] square millimeter.